



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File PR-2022-039

Newland Canada Corporation

*Decision made  
Friday, August 26, 2022*

*Decision and reasons issued  
Monday, September 12, 2022*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.

**BY**

**NEWLAND CANADA CORPORATION**

**AGAINST**

**THE CORRECTIONAL SERVICE OF CANADA**

**DECISION**

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint, as the information provided by the complainant does not disclose a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.

Randolph W. Heggart

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Randolph W. Heggart  
Presiding Member

## STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> (CITT Act) provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*<sup>2</sup> (Regulations), a potential supplier may file a complaint with the Canadian International Trade Tribunal concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Subsection 30.13(1) of the CITT Act provides that, subject to the Regulations, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the CITT Act, it shall decide whether to conduct an inquiry into the complaint.

## SUMMARY OF THE COMPLAINT

[2] This complaint by Newland Canada Corporation (Newland) relates to a procurement (solicitation 50200-22-4168926) issued by the Correctional Service of Canada (CSC) for hotel accommodation and meal services in Saskatoon, Saskatchewan, for correction officer recruits while they complete correctional training programs.

[3] Newland claims that CSC improperly declared its bid unresponsive. More specifically, Newland alleges that CSC incorrectly determined that its bid did not comply with the three following mandatory technical requirements:<sup>3</sup>

**M1** Provide up to a maximum of 27 guest rooms in three different blocks during the period of August 31, 2022 to May 19, 2023

- Up to 27 recruits during the period of August 31, 2022 to December 8, 2022;
- Up to 27 recruits during the period of January 4, 2023 to April 7, 2023 and
- Up to 27 recruits during the period of February 13, 2023 to May 19, 2023

In order to meet this requirement, the bidder must provide a copy of a temporary reservation confirmation numbers

**M4** The bidder must provide a copy of their most recent Restaurant Health Inspection done by the Saskatchewan Health Authority.

**M5** The bidder must submit cleaning and cleanliness standards of the property.<sup>4</sup>

[4] As a remedy, Newland requests that the designated contract be terminated and that its bid be re-evaluated.

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<sup>1</sup> R.S.C., 1985, c. 47 (4th Supp.).

<sup>2</sup> SOR/93-602.

<sup>3</sup> Exhibit PR-2022-039-01 at 27.

<sup>4</sup> *Ibid.* at 19–20.

## BACKGROUND

[5] The request for proposal (RFP) was published on Buyandsell.gc.ca<sup>5</sup> on July 21, 2022, and closed on August 8, 2022.

[6] On August 12, 2022, CSC notified Newland that the contract had been awarded to another bidder in the amount of \$678,699.00. In its letter to Newland, CSC stated that the evaluators determined that Newland's bid did not comply with all the mandatory technical requirements of the solicitation, including M1, M4 and M5.<sup>6</sup>

[7] On the same day, Newland replied to CSC, explaining why it believed that its bid complied with all the mandatory technical requirements of the RFP. Newland stated that it objected to CSC's contract award, requested that its proposal be reassessed and requested that the contract award be reconsidered.<sup>7</sup>

[8] On the same day, CSC suggested to Newland that they hold a debriefing meeting.<sup>8</sup>

[9] On August 15, 2022, Newland requested that the debriefing be held the following day, on August 16, 2022. On the same day, CSC confirmed that it was available on August 16, 2022, to complete the debrief, provided written explanations on the three mandatory technical requirements with which Newland was found to be non-compliant and elaborated on what was required in order to comply with the criteria.<sup>9</sup>

[10] On August 16, 2022, Newland answered CSC's explanations with some additional remarks on how, according to Newland, its bid complied with the previously mentioned mandatory technical requirements.

[11] On August 16, 2022, the debriefing meeting took place and lasted for approximately 15 minutes. CSC gave further details on the information that should have been included in the bid about complying with the mandatory technical requirements.<sup>10</sup> After the meeting, CSC also wrote to Newland to clarify that the price of the awarded contract covered the full contract period.<sup>11</sup>

[12] On August 18, 2022, Newland submitted its complaint to the Tribunal.

[13] On August 19, 2022, the Tribunal requested additional information from Newland pursuant to subsection 30.12(2) of the CITT Act.

[14] On August 23, 2022, Newland provided the requested information. The complaint was considered to have been filed on that day.

[15] On August 26, 2022, the Tribunal decided not to conduct an inquiry into the complaint.

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<sup>5</sup> Online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-22-01002087>>.

<sup>6</sup> Exhibit PR-2022-039-01 at 27.

<sup>7</sup> Exhibit PR-2022-039-01.A at 50–52.

<sup>8</sup> *Ibid.* at 49.

<sup>9</sup> *Ibid.* at 47–49.

<sup>10</sup> *Ibid.* at 54–55.

<sup>11</sup> *Ibid.* at 44.

## ANALYSIS

[16] Pursuant to sections 6 and 7 of the Regulations, after receiving a complaint that complies with subsection 30.11(2) of the CITT Act, the Tribunal must determine whether the following four conditions are met before it can conduct an inquiry:

- (i) the complaint has been filed within the time limits prescribed by section 6 of the Regulations;
- (ii) the complainant is a potential supplier;
- (iii) the complainant is in respect of a designated contract; and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.

[17] The Tribunal finds that the first three conditions are met. However, the Tribunal determines that the fourth condition is not met. For the reasons that follow, the Tribunal finds that Newland's ground of complaint does not disclose a reasonable indication that the procurement was conducted in violation of the applicable trade agreements.

### **CSC properly evaluated and declared Newland's bid non-compliant to mandatory technical requirement M4**

[18] With respect to the second mandatory technical requirement raised by CSC (M4), i.e. the inclusion in the proposal of the establishment's most recent Restaurant Health Inspection completed by the Saskatchewan Health Authority, the Tribunal finds that CSC followed the terms of the tender documents precisely when it determined that Newland's bid was not compliant. As such, CSC complied with the applicable trade agreements.

[19] The Tribunal has repeatedly made clear that the burden is on the bidder to demonstrate compliance in its bid.<sup>12</sup> In *Falcon Environmental Inc. v. Department of Public Works and Government Services*, the Tribunal stated the following:<sup>13</sup>

The Tribunal has also been clear that bidders bear the onus of demonstrating that their bids meet the mandatory criteria of a solicitation. In other words, bidders bear the responsibility of “connecting the dots”—they must take care to ensure that any and all supporting documentation in their bids clearly demonstrates compliance. As such, while the Tribunal has encouraged evaluators to resist making assumptions about a bid, ultimately, it is incumbent upon the bidder to exercise due diligence in the preparation of its proposal to ensure that it is unambiguous and properly understood by the evaluators.

[Footnotes omitted]

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<sup>12</sup> *Madsen Diesel & Turbine Inc. v. Department of Public Works and Government Services* (26 June 2014), PR-2014-018 (CITT) at para. 24. See also *Raymond Chabot Grant Thornton Consulting Inc. and PricewaterhouseCoopers LLP v. Department of Public Works and Government Services* (25 October 2013), PR-2013-005 and PR-2013-008 (CITT) at para. 37.

<sup>13</sup> *Falcon Environmental Inc. v. Department of Public Works and Government Services* (11 January 2021), PR-2020-034 (CITT) at para. 64.

[20] In *Valcom Consulting Group Inc. v. Department of National Defence*, the Tribunal indicated that, if the conclusion is that it is not clear whether a bid is compliant, it is a conclusion that the bid is non-compliant, adding that the onus to show compliance rests on the bidder; it is not incumbent on, or permissible for, government institutions to give bidders the benefit of the doubt where compliance cannot be clearly established.<sup>14</sup>

[21] Newland provided a copy of the hotel restaurant's licence confirming it as a "Licensed Public Eating Establishment", as contemplated by the Saskatchewan Health Authority.<sup>15</sup> However, the Tribunal finds that CSC was correct in determining that this did not clearly establish compliance with the requirement to provide a copy of the hotel's Restaurant Health Inspection. If Newland was going to rely upon a different document, it should have provided a sufficient explanation in its bid as to why the document was equivalent or superior to the health inspection certificate. CSC may not infer compliance where no evidence to prove such compliance exists. The Tribunal finds that no evidence was tendered to show that CSC's conclusion in the circumstances was unreasonable.

[22] Failure to comply with one of the mandatory requirements of the RFP was sufficient for CSC to reject Newland's bid.

[23] In such circumstances, even if Newland's arguments that CSC incorrectly determined that its bid did not comply with mandatory technical requirements M1 and M5 were supported by the evidence, the conduct of an inquiry would be a moot exercise, as the Tribunal would be unable to provide a remedy with respect to a bid that would have been disqualified in any event on different grounds.<sup>16</sup>

## Observations

[24] With respect to the other two mandatory technical requirements raised by CSC (M1 and M5) in its rejection of Newland's proposal, the Tribunal notes it was readily apparent that the terms of the RFP are somewhat ambiguous with respect to those requirements. CSC could have provided a more detailed explanation of what should have been included in the bidder's proposals to comply with these two requirements. More specifically, CSC could and probably should have clarified in the RFP what constituted a "temporary reservation confirmation number" and what constituted "cleaning and cleanliness standards of the property."

[25] In the circumstances, Newland's "booking confirmation" provided most of the required information for the hotel. However, had this confirmation been contained, for example, in a document that included the relevant room blocks printed on hotel letterhead, it would have been far easier for the procuring officer to verify the authenticity of the document. With respect to the "cleaning and cleanliness standards of the property", following two years of COVID-19 pandemic protocols, it should come as no surprise that the procuring department sought more information than confirmation of the frequency with which hotel rooms would be cleaned. While greater precision

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<sup>14</sup> *Valcom Consulting Group Inc. v. Department of National Defence* (14 June 2017), PR-2016-056 (CITT) at para. 70.

<sup>15</sup> Exhibit PR-2022-039-01 at 26.

<sup>16</sup> See, for example, *Steinert US, Inc.* (15 August 2022), PR-2022-028 (CITT) at para. 54; *MacGregor's Custom Machining Ltd.* (5 August 2021), PR-2021-026 (CITT) at para. 37; *Bio-Rad (Canada) Ltd.* (18 December 2017), PR-2017-044 (CITT) at para. 12.

would have yielded better results, the Tribunal does not find that CSC was unreasonable in finding Newland's bid non-compliant with mandatory technical requirement M5.

[26] Nevertheless, the Tribunal has previously found that bidders should not make assumptions about the terms of an RFP.<sup>17</sup> If there is any doubt about the essential elements of the solicitation, the Tribunal encourages bidders to pose questions and to seek clarification during the bid process. Understanding the fundamentals of an RFP ought to be achieved during the bidding period, not after, and bidders can avert disappointment and provide better responses to published opportunities if they carefully consider all the terms of a solicitation and pose questions instead of acting upon their assumptions. This is especially true when tender documents are somewhat ambiguous or fail to define certain key terms contained in mandatory provisions.

## DECISION

[27] Pursuant to subsection 30.13(1) of the CITT Act, the Tribunal has decided not to conduct an inquiry into the complaint, as the information provided by the complainant does not disclose a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.

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Randolph W. Heggart  
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Presiding Member

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<sup>17</sup> *Tritech Group Ltd. v. Department of Public Works and Government Services* (31 March 2014), PR-2013-035 (CITT) at para. 29.